

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

KATHERINE MOUSSOURIS, on behalf
of herself and a class of those similarly
situated,

Plaintiff,

v.

MICROSOFT CORPORATION

Defendant.

Case No.

CLASS ACTION COMPLAINT

(Trial by Jury Demanded)

Plaintiff Katherine Moussouris (“Plaintiff”), on behalf of herself and all others similarly
situated, alleges as follows:

SUMMARY OF CLAIMS

1. Plaintiff brings this action alleging violations of Title VII of the Civil Rights Act
of 1964, 72 U.S.C. §§ 2000e *et seq.* (“Title VII”); and the Washington Law Against
Discrimination, Rev. Code Wash. 49.60.010. *et seq.*, to challenge Microsoft Corporation’s
(“Microsoft”) continuing policy, pattern and practice of sex discrimination against female
employees in technical and engineering roles (“female technical employees”) with respect to
performance evaluations, pay, promotions, and other terms and conditions of employment.
Microsoft has implemented these policies and practices despite knowing that they have a

1 longstanding disparate impact on female technical employees. Microsoft also retaliates against
2 female technical employees who complain about this discrimination.

3 2. Microsoft is a global provider of software and software-related services. In 2014,
4 Microsoft generated \$93.6 billion dollars in net revenue and \$12.2 billion dollars in net income.
5 Microsoft is a major employer, with a headcount of over 117,000 employees in 2015, many of
6 whom are technical employees.

7 3. As a result of Microsoft's policies, patterns, and practices, female technical
8 employees receive less compensation and are promoted less frequently than their male
9 counterparts. Microsoft's company-wide policies and practices systematically violate female
10 technical employees' rights and result in the unchecked gender bias that pervades its corporate
11 culture. The disadvantage to female technical employees in pay and promotion is not isolated or
12 exceptional, but rather the regular and predictable result of Microsoft's policies and practices and
13 lack of proper accountability measures to ensure fairness.

14 4. In addition to bringing this action on her own behalf, Plaintiff also brings this
15 action on behalf of a class of similarly situated current and former female technical employees
16 employed by Microsoft in the United States ("the Class"), in order to end Microsoft's
17 discriminatory policies and practices and to make the Class whole.

18 **THE PARTIES**

19 **Plaintiff**

20 5. Plaintiff Katherine Moussouris is a woman who lives in Kirkland, Washington.
21 She is a citizen of the United States.

22 6. Plaintiff was employed by Microsoft from approximately April 2007 to May 30,
23 2014 in Redmond, Washington.

24 **Defendant**

25 7. Defendant Microsoft is a corporation formed under the laws of the State of
26 Washington with a place of business within the city of Redmond, King County, at One Microsoft
27 Way, Redmond, Washington 98052-7329.
28

1 because many of the acts complained of and giving rise to the claims alleged herein occurred in
2 Washington and in this District.

3 16. Plaintiff has exhausted her administrative remedies and complied with all statutory
4 prerequisites to her Title VII claims. Plaintiff filed a charge of gender discrimination and
5 retaliation individually and on behalf of all similarly situated female technical employees
6 employed by Microsoft with the Equal Employment Opportunity Commission (“EEOC”) on May
7 13, 2014. By notice dated June 29, 2015, the EEOC issued a Notice of Right to Sue. This
8 complaint is made within ninety days of the Notice of Right to Sue.

9 **FACTUAL ALLEGATIONS**

10 17. Microsoft maintains uniform employment, compensation, performance review,
11 and promotion policies throughout the United States. Microsoft also cultivates and promotes a
12 common corporate culture.

13 18. Microsoft’s offices throughout the U.S. use a common organizational structure,
14 organizing technical employees by levels.

15 19. Microsoft discriminates against female technical employees in (1) performance
16 evaluations; (2) compensation; and (3) promotions.

17 **Performance Evaluations**

18 20. Microsoft uses uniform, unvalidated, and unreliable procedures for evaluating
19 employee performance that systematically undervalue female technical employees relative to
20 their similarly situated male peers.

21 21. For example, for many years and continuing through 2013, Microsoft used a
22 companywide “stack ranking” system for evaluating employee performance, which force ranked
23 employees from best to worst using a performance rating from 1 through 5, with 1 being best, and
24 5 being worst. Only 20% of employees could receive a 1, 20% a 2, 40% a 3, 13% a 4, and the
25 remaining 7% received a 5. This stack ranking process systematically undervalued female
26 technical employees compared to similarly situated male employees because, among other
27 reasons, it meant that lower ranked employees were inferior and should be paid less and promoted
28 less frequently regardless of their actual contributions to Microsoft. This forced ranking process

1 took place twice each year, with the mid-year stack ranking used as a mechanism to determine
2 mid-year promotions, and the end of year stack ranking used for compensation and year-end
3 promotion decisions.

4 22. The numerical performance ratings were critical because Microsoft used the
5 ratings to determine the amount of employees' bonuses and raises, and to determine whom it
6 would promote.

7 23. Upon information and belief, female technical employees tended to receive lower
8 scores than their male peers, despite having had equal or better performance during the same
9 performance period.

10 24. From 2014 to the present, Microsoft has used a similarly unvalidated, and
11 unreliable discriminatory performance evaluation procedure that systematically undervalues
12 female technical employees relative to their male peers, and results in lower scores than men in
13 similar positions with no better or worse objective performance.

14 **Compensation**

15 25. Microsoft employs uniform, unvalidated, and unreliable procedures for
16 determining employees' compensation that disparately impact female professionals.

17 26. Microsoft determines employees' compensation in large part by their performance
18 review score. Because female technical employees systematically receive worse review scores,
19 they earn less than their male peers.

20 **Promotions**

21 27. Microsoft also employs common, unvalidated, unreliable, and discriminatory
22 procedures for selecting employees for promotion.

23 28. Microsoft does not apply legitimate or objective criteria for promotions amongst
24 technical employees. Promotions are not determined by objective performance measures.

25 29. Instead, an employee's manager must recommend him or her for promotion, and
26 then the promotion must be approved by a small, centrally-controlled group of senior managers.
27 To the extent that managers consider the employees' performance scores in the promotion
28 process, the discriminatory impact of that biased, invalid system is further compounded in

1 promotions. Overall, Microsoft promotes an overwhelmingly disproportionate number of men,
2 and passes over equally or more qualified women.

3 **CLASS ACTION ALLEGATIONS**

4 30. Plaintiff brings this class action pursuant to Federal Rules of Civil Procedure
5 23(a), (b)(2), and (c)(4) seeking liability-phase injunctive and declaratory relief on behalf of a
6 Class of all female technical employees employed by Microsoft in the United States at any time
7 from September 16, 2009 through the resolution of this action for claims under Title VII.
8 Plaintiff also brings this class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3)
9 seeking backpay, monetary damages and other make-whole relief on behalf of a Class of all
10 female technical employees employed by Microsoft in the United States at any time from
11 September 16, 2009 through the resolution of this action for claims under Title VII. Plaintiff
12 reserves the right to amend the definition of the Class based on discovery or legal developments.

13 31. Plaintiff also brings this class action pursuant to Federal Rules of Civil Procedure
14 23(a), (b)(2), and (c)(4) seeking liability-phase injunctive and declaratory relief on behalf of a
15 Class of all female technical employees employed by Microsoft in the United States at any time
16 from September 16, 2012 through the resolution of this action for claims under the Washington
17 Law Against Discrimination. Plaintiff also brings this class action pursuant to Federal Rules of
18 Civil Procedure 23(a) and (b)(3) seeking backpay, monetary damages and other make-whole
19 relief on behalf of a Class of all female technical employees employed by Microsoft in the United
20 States at any time from September 16, 2012 through the resolution of this action for claims under
21 the Washington Law Against Discrimination. Plaintiff reserves the right to amend the definition
22 of the Class based on discovery or legal developments.

23 32. Plaintiff is a member of the Class she seeks to represent.

24 33. The members of the Class identified herein are so numerous that joinder of all
25 members is impracticable. Microsoft had a headcount of over 117,000 employees in 2015.
26 Although Plaintiff does not know the precise number of female technical employees at Microsoft,
27 the number is far greater than can be feasibly addressed through joinder.
28

1 34. There are questions of law and fact common to the Class, and these questions
2 predominate over any questions affecting only individual members. Common questions include:

3 a. whether Microsoft's policies and practices discriminate against female
4 technical employees;

5 b. whether Microsoft's policies and practices violate Title VII and/or the
6 Washington Law Against Discrimination;

7 c. whether Microsoft's performance evaluation system discriminates against
8 female technical employees;

9 d. whether Microsoft's compensation system discriminates against female
10 technical employees;

11 e. whether Microsoft's promotion system discriminates against female
12 technical employees;

13 f. whether Microsoft has failed to implement policies and procedures to
14 prevent retaliation against employees who challenge gender discrimination in the workplace, has
15 failed to address complaints of gender discrimination in the workplace, and has failed to conduct
16 proper investigations of same; and

17 g. whether equitable remedies, injunctive relief, compensatory damages, and
18 punitive damages for the Class are warranted;

19 35. Plaintiff's claims are typical of the claims of the Class.

20 36. Plaintiff will fairly and adequately represent and protect the interests of the Class.

21 37. Plaintiff has retained counsel competent and experienced in complex class actions
22 and employment discrimination litigation.

23 38. Class certification is appropriate pursuant to Federal Rule of Civil Procedure
24 23(b)(2) because Microsoft has acted and/or refused to act on grounds generally applicable to the
25 Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the Class
26 as a whole. The Class Members are entitled to injunctive relief to end Microsoft's common,
27 uniform, unfair, and discriminatory policies and practices.
28

39. Class certification is also appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) because common questions of fact and law predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class Members have been damaged and are entitled to recovery as a result of Microsoft's common, unfair, and discriminatory policies and practices. Microsoft has computerized account data, payroll data, and personnel data that will make calculation of damages for specific Class Members relatively simple. The propriety and amount of punitive damages are based on Microsoft's common conduct, making these issues common to the Class.

CLAIMS OF NAMED PLAINTIFF

40. Plaintiff Moussouris was hired by Microsoft in April of 2007 as a Security Program Manager in the Trustworthy Computing Group. During her tenure at Microsoft, Plaintiff consistently achieved and usually exceeded her performance goals, and made significant contributions to Microsoft's business. Yet, as a result of Microsoft's forced ranking process, Plaintiff received lower performance ratings than her male peers, despite having better performance during the same performance period.

41. For example, in May 2012, Plaintiff's manager told her that she had outstanding performance and had earned a rating of 2. However, after the forced ranking process, she instead received a 3.

42. Similarly, in May 2013, Plaintiff's manager again commended her performance and told her she deserved a 1. After the forced ranking process, Plaintiff received a 2.

43. Microsoft also paid Plaintiff less than her male peers throughout her tenure at the company.

44. Microsoft also discriminated against Plaintiff in its promotion process. From 2010 to 2014, Microsoft passed her over for promotions in favor of less qualified and less experienced men.

45. For example, in 2012, while Plaintiff was on maternity leave, she was not put forward for a promotion to Level 65, Principal Security Strategist, for which she was eligible and

1 eminently well-qualified. In the year prior, Plaintiff had been responsible for an industry-leading
2 initiative that resulted in the highest-rated news announcement for the Microsoft Trustworthy
3 Computing Group. However, Microsoft instead selected Plaintiff's male colleague, who was less
4 qualified, to be her manager. Plaintiff's managers from 2011 through 2013 told her that although
5 the impact, quality, and scope of her work had been "Principal-level" for years, certain managers
6 did not like her manner or style, and so Microsoft did not promote her. Plaintiff was subject to an
7 invalid and gender biased selection process.

8 46. In 2013, Plaintiff was again passed over for promotion to Level 65, despite
9 newsworthy new initiatives she created that are still referred to in the security industry. Instead,
10 Microsoft promoted two less qualified men in the Trustworthy Computing Group, who had not
11 performed the same scope of work as Plaintiff, nor obtained the same level of recognition and
12 accomplishment in the security industry.

13 47. Plaintiff also saw other female technical employees passed over for promotion in
14 favor of less-qualified men. For example, when the director of the Trustworthy Computing
15 Group left, two Principal-level women who had worked for him were not even considered or
16 given the chance to interview for the role. Instead, Microsoft hired a less qualified male from
17 outside the company with little to no relevant work experience in managing the specifics of large
18 scale security response in a company with the size and scope of Microsoft.

19 48. In 2008, Plaintiff complained about the Director of the Trustworthy Computing
20 Group, who was sexually harassing other women in the Group. Microsoft investigated and
21 concluded that he had in fact been sexually harassing female employees. Yet Microsoft's
22 response was to re-assign this male Director to another part of the Trustworthy Computing Group,
23 while retaining his title and influence. Before he was transferred, however, he retaliated against
24 Plaintiff by assigning her a low bonus. Plaintiff complained about retaliation, but Microsoft took
25 no action. Since that time, the same Director has been promoted to Senior Director.

26 49. Starting in 2013, Plaintiff's manager systematically undermined Plaintiff by
27 reducing the scope of her role, even though her high performance never changed. For example,
28 he took away several of Plaintiff's responsibilities and re-assigned them to a less qualified and

1 less experienced man, two levels below Plaintiff. He also began to assign Plaintiff low-level
 2 tasks that he never asked men at Plaintiff's level to do. Plaintiff complained about this unfair
 3 treatment, but Microsoft took no action.

4 50. Due to the nature and extent of the unfair treatment Plaintiff received, and
 5 Microsoft's continued refusal to take any corrective action to address it, Plaintiff was forced to
 6 resign on May 30, 2014.

7 **CAUSES OF ACTION**

8 **FIRST CLAIM FOR RELIEF**

9 **Intentional Discrimination**

10 **(Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*)**
 11 **(On Behalf of Plaintiff and the Class)**

11 51. Plaintiff incorporates the preceding paragraphs as alleged above.

12 52. This claim is brought by Plaintiff on behalf of herself and the Class she seeks to
 13 represent. Plaintiff has filed a timely charge with the EEOC and has thus exhausted her
 14 administrative remedies.

15 53. Microsoft has engaged in an intentional, company-wide, and systematic
 16 policy, pattern, and/or practice of discrimination against its female technical employees.
 17 Microsoft has intentionally discriminated against Plaintiff and the Class in violation of Title VII
 18 by, among other things:

19 a. Utilizing a biased performance rating system;
 20 b. Utilizing a biased compensation system;
 21 c. Utilizing a biased promotion system; and
 22 d. Failing to take reasonable and adequate steps to prevent and correct the use
 23 of standardless, unvalidated, and/or illegitimate criteria to determine the terms and conditions of
 24 employment.

25 54. These company-wide policies are intended to and do have the effect of:

26 a. Denying Plaintiff and Class Members business opportunities because of
 27 their gender;
 28 b. Compensating them less because of their gender;

1 c. Failing to promote them because of their gender;
 2 d. Evaluating their performance more negatively because of their gender; and
 3 e. Providing them with inferior terms and conditions of employment as a
 4 result of discriminatory performance measures that systematically disadvantaged them because of
 5 their gender.

6 55. The discriminatory acts that constitute Microsoft's pattern and/or practice of
 7 discrimination have occurred both within and outside the liability period in this case.

8 56. As a direct result of Microsoft's discriminatory policies and/or practices as
 9 described above, Plaintiff and the Class have suffered damages including, but not limited to, lost
 10 past and future income, compensation, and benefits.

11 57. The foregoing conduct constitutes illegal, intentional discrimination and
 12 unjustified disparate treatment prohibited by 42 U.S.C. §§ 2000e *et seq.*

13 58. Plaintiff requests relief as hereinafter described.

14 **SECOND CLAIM FOR RELIEF**

15 **Disparate Impact Discrimination** 16 **(Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*)** **(On Behalf of Plaintiff and the Class)**

17 59. Plaintiff incorporates the preceding paragraphs as alleged above.

18 60. This claim is brought by Plaintiff on behalf of herself and the Class she seeks to
 19 represent. Plaintiff has timely filed a charge with the EEOC and has thus exhausted her
 20 administrative remedies.

21 61. Microsoft's reliance on illegitimate and unvalidated systems and criteria to
 22 evaluate employee performance, set compensation, and select individuals for promotion, and
 23 determine other terms and conditions of employment, have an adverse impact on female technical
 24 employees in violation of Title VII and are not, and cannot be, justified by business necessity.
 25 Even if such system and/or policies could be justified by business necessity, less discriminatory
 26 alternatives exist and would equally serve any alleged necessity.

27 62. Microsoft has maintained these discriminatory policies, patterns, and/or practices
 28 both within and outside the liability period in this case.

63. As a direct result of Microsoft's discriminatory policies and/or practices as described above, Plaintiff and the Class have suffered damages including, but not limited to, lost past and future income, compensation, and benefits.

64. The foregoing policies, patterns, and/or practices have an unlawful disparate impact on women in violation of 42 U.S.C. §§ 2000e *et seq.*

65. Plaintiff requests relief as hereinafter described.

THIRD CLAIM FOR RELIEF

Intentional Discrimination **(Washington Law Against Discrimination, Rev. Code Wash. 49.60.010. *et seq.*)** **(On Behalf of Plaintiff and the Class)**

66. Plaintiff incorporates the preceding paragraphs as alleged above.

67. This claim is brought by Plaintiff on behalf of herself and the Class she seeks to represent.

68. Microsoft has engaged in an intentional, company-wide, and systematic policy, pattern, and/or practice of discrimination against its female technical employees. Microsoft has intentionally discriminated against Plaintiff and the Class in violation of the Washington Law Against Discrimination by, among other things:

- a. Utilizing a biased performance rating system;
- b. Utilizing a biased compensation system;
- c. Utilizing a biased promotion system; and
- d. Failing to take reasonable and adequate steps to prevent and correct the use of standardless, unvalidated, and/or illegitimate criteria to determine the terms and conditions of employment.

69. These company-wide policies are intended to and do have the effect of:

- a. Denying Plaintiff and Class Members business opportunities because of their gender;
- b. Compensating them less because of their gender;
- c. Failing to promote them because of their gender;
- d. Evaluating their performance more negatively because of their gender; and

e. Providing them with inferior terms and conditions of employment as a result of discriminatory performance measures that systematically disadvantaged them because of their gender.

70. The discriminatory acts that constitute Microsoft's pattern and/or practice of discrimination have occurred both within and outside the liability period in this case within the State of Washington, and the discriminatory policies, patterns, and practices have had a discriminatory impact on the female employees of Microsoft within the State of Washington.

71. As a direct result of Microsoft's discriminatory policies and/or practices as described above, Plaintiff and the Class have suffered damages including, but not limited to, lost past and future income, compensation, and benefits.

72. The foregoing conduct constitutes illegal, intentional discrimination and unjustified disparate treatment prohibited by the Washington Law Against Discrimination, Rev. Code Wash. 49.60.010. *et seq.*

73. Plaintiff requests relief as hereinafter described.

FOURTH CLAIM FOR RELIEF

Disparate Impact Discrimination **(Washington Law Against Discrimination, Rev. Code Wash. 49.60.010. *et seq.*)** **(On Behalf of Plaintiff and the Class)**

74. Plaintiff incorporates the preceding paragraphs as alleged above.

75. This claim is brought by Plaintiff on behalf of herself and the Class she seeks to represent.

76. Microsoft's reliance on illegitimate and unvalidated systems and criteria to evaluate employee performance, set compensation, and select individuals for promotion, and determine other terms and conditions of employment, have an adverse impact on female technical employees in violation of the Washington Law Against Discrimination and are not, and cannot be, justified by business necessity. Even if such system and/or policies could be justified by business necessity, less discriminatory alternatives exist and would equally serve any alleged necessity.

SIXTH CLAIM FOR RELIEF

Retaliation

**(Washington Law Against Discrimination, Rev. Code Wash. 49.60.010. et seq.
(On Behalf of Plaintiff Moussouris Individually)**

86. Plaintiff incorporates the preceding paragraphs as alleged above.

87. This claim is brought by Plaintiff Moussouris individually.

88. Plaintiff engaged in protected activities, including making internal complaints of unlawful discrimination and filing charges with the EEOC complaining of Microsoft's discriminatory policies and practices.

89. Microsoft took adverse actions against Plaintiff with the purpose of retaliating against her because of her participation in protected activities during the liability period in the State of Washington, and Plaintiff suffered damages in the State of Washington as a result of that conduct.

90. Plaintiff requests relief as hereinafter described.

PRAYER FOR RELIEF

91. WHEREFORE, Plaintiff and the Class pray for relief as follows:

- a. Certification of the case as a class action on behalf of the proposed Class;
- b. Designation of Representative Plaintiff Moussouris as representative of the Class;
- c. Designation of Representative Plaintiff's counsel of record as Class Counsel;
- d. A declaratory judgment that the practices complained of herein are unlawful and violate 42 U.S.C. §§ 2000e, *et seq.*; and the Washington Law Against Discrimination, Rev. Code Wash. 49.60.010. *et seq.*;
- e. A preliminary and permanent injunction against Microsoft and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in policies, patterns, and/or practices that discriminate against Plaintiff or the Class because of their gender or participation in this lawsuit;

- 1 f. An order that Microsoft institute and carry out policies, practices, and
2 programs that provide equal employment opportunities for all employees regardless of gender,
3 and that it eradicate the effects of their past and present unlawful employment practices;
- 4 g. An order requiring Microsoft to develop and institute accurate and
5 validated standards for evaluating performance, determining pay, and making promotion
6 decisions;
- 7 h. An order appointing a monitor to ensure that Microsoft complies with the
8 injunction provisions of any decree that the Court orders;
- 9 i. An order retaining jurisdiction over this action to ensure that Microsoft
10 complies with such a decree;
- 11 j. An order restoring Plaintiff and Class Members to their rightful positions at
12 Microsoft (*i.e.*, reinstatement), or in lieu of reinstatements, an order for front pay benefits;
- 13 k. Back pay (including interest and benefits) for the Representative Plaintiff
14 and Class Members;
- 15 l. All damages sustained as a result of Microsoft's conduct, including
16 damages for emotional distress, humiliation, embarrassment, and anguish, according to proof;
- 17 m. Exemplary and punitive damages in an amount commensurate with
18 Microsoft's ability to pay and to deter future conduct;
- 19 n. Costs incurred herein, including reasonable attorneys' fees to the extent
20 allowable by law;
- 21 o. Pre-judgment and post-judgment interest, as provided by law; and
- 22 p. Such other and further legal and equitable relief as this Court deems
23 necessary, just, and proper.

JURY DEMAND

24

25 92. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands
26 a trial by jury in this action.

27

28

Respectfully submitted,

Dated: September 16, 2015

By: 
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